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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Letter dated 8 August 1991 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities

I have the honour to enclose herewith an information note on certain recent developments in Turkey.

I would be grateful if the present letter and its annex could be circulated as a document of the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities under agenda item 10.

(Signed) Gündüz AKTAN
Ambassador
Permanent Representative

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A. General situation in Turkey

1. Turkey is located amidst the most unstable regions of the world, namely, the Middle East, Trans-Caucasia and the Balkans. In spite of the difficulties related to this turbulent environment, Turkey has achieved stability, maintained democracy and sustained a rapid pace of socio-economic development.

2. The Republic of Turkey is a unitary, democratic, secular and social State based on the rule of law. It has a fully representative and parliamentarian multi-party democracy which is coupled with a free market economy. There are more than 20 political parties in the country, ranging from the right wing to the extreme left of the political spectrum.

3. Respect for human rights is one of the basic tenets of the Republic of Turkey. Human rights principles are enshrined in the Constitution and upheld not only by the Government, but also by the fully elected Parliament that represents all strata of society and all regions of the country and, as such, reflects the will of the nation. The judiciary, namely the Constitutional Court, the Court of Appeal and all other bodies and authorities entrusted with judicial powers, are fully independent. Moreover, they constitute one of the best guarantees for the supremacy of law in the country, as a result of deeply rooted traditions.

4. Local administrations are vested with extensive decision-making powers for the local people. They consist of a locally elected mayor and a municipal council. They have a budget of their own and have recently been entitled to levy taxes on the local people, which has strengthened their role at the local level. The independence of the local administrations has been safeguarded by the Constitution and is one of the main pillars of democracy in Turkey. Local administrations with vast powers, as mentioned above, reflect different characteristics and aspirations of the Turkish citizens within the framework of the Constitution and national laws.

5. In accordance with the free-market economic system and pluralistic democracy, the individual constitutes the cornerstone of society. The State has the duty to protect and promote the rights of the individual. Turkey is one of the founding members of the Council of Europe and a party to the process of the Conference on Security and Cooperation in Europe (CSCE). Turkey has accepted that its human rights performance be monitored in the above-mentioned multilateral context, in addition to the obligations and commitments that it has assumed in the context of the United Nations human rights machinery.

B. Recent major steps in the field of human rights

6. It may be recalled that Turkey recognized, on 28 January 1987, the competence of the European Commission on Human Rights to receive petitions from any person, non-governmental organization or group of individuals.

7. On 8 January 1990, Turkey recognized the compulsory jurisdiction of the European Court of Human Rights.

8. On 4 March 1990, the Prime Minister issued instructions for the strict implementation of article 136 of the Code of Criminal Procedure, which stipulates the right of all accused persons to have legal counsel at any and every stage of the proceedings. In this connection, it should also be noted that article 135 of the Code of Criminal Procedure stipulates that any person under detention or interrogation has the right not to answer. In addition to this, "testimony by way of free will" is a general principle of the Turkish legal system. In other words, testimony must be free of any kind of pressure. Article 15 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is fully and directly applicable in Turkey.

9. On 15 September 1990, Turkey signed the United Nations Convention on the Rights of the Child.

10. On 6 November 1990, Turkey signed the Ninth Additional Protocol to the European Convention on Human Rights, which stipulates the right of the individual to submit petitions to the European Court of Human Rights.

11. On 6 November 1990, Turkey also signed the revised European Social Charter.

12. In November 1990, the CSCE Paris Charter was signed by Turkey.

13. On 21 November 1990, the Turkish Grand National Assembly adopted Law No. 3679 introducing important amendments to the Turkish Penal Code. The said law came into effect on 29 November 1990. Thus, the death penalty for 18 different types of crimes was abolished and replaced by the penalty of life imprisonment. It is important to underline that the death penalty has not been implemented in Turkey since 1984.

14. On 4 December 1990, the Turkish Grand National Assembly adopted a law concerning the establishment of a Human Rights Inquiry Commission. It is believed that this parliamentary Commission will play a major role in monitoring and further improving the human rights situation in Turkey. It should be added that this Commission has already become operational. It has formed the following sub-commissions:

(a) The Sub-Commission for Prisons: its members have visited the Bursa prison; other penitentiary institutions will also be visited;

(b) The Sub-Commission for Sirnak, which is investigating certain allegations concerning the south-eastern border area;

(c) The Sub-Commission for Police Stations, whose members have visited the Police Headquarters at Ankara.

At the request of its members, the Commission has embarked upon a study with a view to comparing certain Turkish laws with international human rights laws. The Commission has established contacts not only with Turkish but also with foreign non-governmental organizations, including Helsinki Watch and Amnesty International.

15. By its decision No. 1990/35 of 10 December 1990, the Court of Appeal confirmed the following points. Confessions recorded at the Office of the Public Prosecutor or at the police station cannot be used as evidence before the Court. Only confessions made before the Court can serve as a basis for the judgement of the Court. Even in this case, confessions have to be supported by additional evidence. It has thus been proved once more that in the Turkish legal system, interrogation is not a method instituted for obtaining evidence. Interrogation is a means of defence.

16. The anti-terror law (No. 3713) which was enacted by the Grand National Assembly on 12 April 1991 and promulgated on the same day has brought about a radical reform in Turkish criminal law by abolishing articles 141, 142 and 163 of the Penal Code, as well as the Law of Treason Against the Country (No. 2), the Law of Freedom of Conscience and Assembly (No. 6187) and the law relating to publications issued in languages other than Turkish (No. 2932).

17. This reform is a significant improvement for human rights in Turkey. With the abrogation of articles 141, 142 and 163 of the Penal Code, in effect since 1936, establishing an association for communist activities and engaging in communist propaganda are no longer considered offences against the State. By virtue of this amendment, communist activities and propaganda have not been subject to prosecution since 12 April 1991. Therefore, pending prosecutions and related actions will be dismissed. Article 142 is of particular importance, since it is due to this article that many writers were sentenced for engaging in communist propaganda. It can therefore be asserted that "crimes of thought" have been abolished in Turkey. The same applies with respect to article 163 of the Penal Code, which proscribed anti-secular activities and propaganda. Article 163 of the Penal Code was inspired by the Law of Treason against one's own Country (No. 2), enacted in 1922. Owing to this link, offences against secularism were considered as treason.

18. On the other hand, there is a linkage between article 163 of the Penal Code and the Law on Freedom of Conscience and Assembly (No. 6187). In addition to article 163, the Law on Freedom of Conscience and Assembly restricted religious propaganda in the broader sense. Because of this connection, an offence against article 163 was considered at the same time to be an offence violating the Law on the Freedom of Conscience and Assembly. Article 163 and the restrictive Law on Freedom of Conscience and Assembly have now both been abrogated.

19. As the restrictive paragraphs of the Law of Associations (No. 2908), which corresponded to articles 141, 142 and 163 of the Penal Code, have also been abrogated, the scope of the associations has been broadened in order to provide for the full exercise of the right of peaceful assembly.

20. The abolition of the law relating to publications in languages other than Turkish (No. 2932) is a significant development in lifting restrictions on the freedom of thought and expression. As of 12 April 1991, there is no limitation whatsoever on the expression or manifestation of thoughts and opinions in any language, including Kurdish.

21. The anti-terror law provides a clear definition of crimes of terror by specifying terrorist actions and organizations. Thus, a distinction is made

between terrorist crimes and non-violent offences. In fact, everyone not involved in terrorist crimes unhesitatingly enjoys the right to freedom of thought, expression, conscience and religion. The underlying idea is quite obvious: to prevent the destruction of fundamental human rights and to maintain the territorial integrity of the State and national security.

22. This recent law grants conditional release covering all the accused persons and convicts. In this respect, the conditional release applies to crimes committed before 8 April 1991. More than 20,000 prisoners and detainees have already been released in accordance with the relevant provision of the law, reducing by 50 per cent the inmate population of the penitentiary institutions. The remaining approximately 20,000 prisoners will benefit in due time from the provisions relating to conditional release.

23. The anti-terror law also prescribes the non-implementation of the death penalty for crimes committed before 8 April 1991. Thus, death penalty convictions handed down prior to this date will be commuted to varying periods of imprisonment, according to the offence committed.

24. The temporary provisions concerning conditional release are also applicable to those who had left the country for having committed crimes against the security of the State and had lost Turkish citizenship as a result of those acts. In accordance with this recently adopted law, they will benefit from this opportunity granted to them provided that they return to Turkey within two years of 12 April 1991.

25. There are no more political prisoners or prisoners of conscience in Turkey even in the narrow meaning given to these concepts by some non-governmental organizations.

C. Combat against torture

26. In addition to the above, the Government of Turkey would like to reiterate its commitment to combating torture. As is known, Turkey is a party to the United Nations and the European conventions against torture. In this context, it did not fail to recognize the right of the individual to avail himself of the relevant provisions of these instruments to pursue his case at the international level after having exhausted domestic remedies. Turkey submitted to the United Nations Committee against Torture its initial report of implementation contained in document CAT/C/7/Add.6. Turkey also received a delegation of the European Committee for the Prevention of Torture. The said delegation visited all the detention centres and police stations that they wished to see. Thus Turkey has willingly assumed international responsibilities in its combat against torture. In this connection, it should be stressed that the provisions of the United Nations and the European conventions against torture are fully incorporated in Turkish legislation. All the provisions of the said conventions can be invoked before the Turkish courts.

27. To complete this overview, the Government would like to outline once more some basic provisions regarding the prevention of torture.

28. According to the Constitution no one can be held guilty until proved guilty in a court of law, and everyone has the right to defence.

29. In line with these principles, any accused person has the right to have legal counsel at any and every stage of the proceedings, as stipulated in article 136 of the Code of Criminal Procedure. The implementation of this provision has been reinforced through two circulars issued by the Office of the Prime Minister on 26 September 1989 and 4 April 1990.

30. Furthermore, the Constitution prescribes the rule of prompt notification of the detention of a person to his or her close relatives. All detained persons have to be brought before the judge within 48 hours. In collectively committed crimes, this period can be extended to 15 days upon the request of the Public Prosecutor and with the approval of the judge. However, such cases are exceptional and concern only 1.7 per cent of detainees according to the statistics covering the period 1984-1989.

31. Article 135 of the Code of Criminal Procedure stipulates that any person under detention or interrogation has the right not to answer.

32. In addition to this, "testimony on free will" is a general principle of the Turkish legal system. In other words, testimony must be free from any kind of pressure. At this stage, it should be once more stressed that article 15 of the United Nations Convention against Torture is fully and directly applicable in Turkey. As explained above, the Court of Appeal has recently confirmed that confessions recorded at the office of the Public Prosecutor or the police station cannot be used as evidence before the courts. Confessions must be made before the judge in the courtroom and be supported by additional evidence.

33. Another important preventive measure worthy of attention is the fact that, in accordance with a directive issued by the Ministry of Interior, all detainees must undergo a medical examination before and after detention and interrogation. This has become a binding rule. It should be added that forensic doctors are fully independent in the discharge of their functions. At the request of the detainee or the public prosecutor, any other doctor may be chosen to undertake the medical examination.

34. In cases where the crime of torture or ill-treatment is committed despite preventive measures, the perpetrator of the crime will be punished by virtue of the pertinent provisions of the Penal Code. The crime of torture must be officially investigated by public prosecutors. That is to say, as soon as a public prosecutor is informed or has the impression that such a crime has occurred, he is required to make the necessary investigation for the purpose of deciding on further action. In his circular instructions of 7 May 1991 sent to all public prosecutors, the Minister of Justice underlined their responsibility to look into all allegations and to conclude the investigations as promptly as possible. Moreover, the Minister of Justice made reference to the rules regarding medical examination before and after the interrogation and access of lawyers to their clients in custody. By circulating these instructions the Minister of Justice has once more reiterated the commitment of the Government to combat abuses in the exercise of State power.

35. As regards any complaints, including complaints of torture, on the part of individuals, it should be indicated that all Turkish citizens have the right to submit petitions to the competent authorities, as well as to the Parliament. Moreover, everyone has the right to appeal. If a plaintiff is not satisfied with the decision reached at the national level, he or she can refer the complaint to the above-mentioned European organs or to the United Nations Committee against Torture.

36. Under the Turkish legal system, excessive deeds of public officials are considered operational defects for which the State is directly responsible. Accordingly, articles 40 and 41 of the Constitution stipulate the principle of compensation for any damage caused by the abuse of State power. The law of 7 May 1964 on indemnifying people who are unlawfully arrested or detained, the law on public officials, and several decisions of the Supreme Court of Appeal and of the Council of State stipulate the implementation of the principle of compensation for torture. In addition to the above-mentioned legislation, Turkey has signed the European Convention on the compensation of victims of violent offences.